IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2008 OF 2007

Dhansingh Jaydev Meena. ..Petitioner.

V/s.

The State of Maharashtra & Ors. ..Respondents.

Mr.Munir Merchant for petitioner.

Mr.G.W.Mattos, AGP for Respondent No.1.

Mr.P.P.Kulkarni for Respondent Nos. 2 and 3.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 5, 2007.

P.C. :

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith by consent.

3. Mr.G.W.Mattos waives notice for Respondent No.1. Mr.Kulkarni waives notice for Respondent Nos. 2 and 3. By consent, matter is disposed of at the admission stage.

4. This Petition takes exception to the impugned Order dated 6th March, 2007 passed by the Special Recovery & Sales Officer, Co-op. Societies, Mumbai.

By the said Order, the Recovery Officer has determined the liability of the Petitioner in the sum of Rs.1,96,071.00. The principal grievance of the Petitioner is that before passing the said order, no prior notice was served on the Petitioner at any point of time. According to the Petitioner, he became aware of the impugned Order only after his salary came to be attached as a consequence of that order. Significantly, at the time of attachment of the salary of the Petitioner, after the order was passed, the Petitioner has been served on the place of his service, that is, in the office situated at BSNL, CTO, Mumbai, where the Petitioner is working as senior supervisor.

5. In response to this stand, the affidavit filed by the Respondents would assert that the notices sent prior to passing of the Order on more than one occasion were returned with postal remark "incomplete address of the Petitioner". The Respondent No.2 states that the earlier Notices were sent on the last known address of the Petitioner, which was furnished to the Respondent No.2. Even if this stand is accepted as it is, no plausible explanation is offered, as to on what basis the Respondent Nos.2 and 3 became aware about place of

service of the Petitioner, on which subsequent proceedings have been served on him at CTO, Mumbai.

6. There is force in the stand taken on behalf of the Petitioner that the Respondent Nos. 2 and 3 though were conscious of that address even earlier, made no attempt to serve the Petitioner on that address - instead sent notices at the residential address, which was left long back by the Petitioner. Suffice it to observe that the Respondent No.3 proceeded with the matter without effecting service on the Petitioner and to ensure that fair opportunity to defend is offered to the Petitioner. On this count alone, the impugned Order deserves to be set aside. Instead, the Petitioner is relegated before the Recovery Officer, who in turn shall consider the matter afresh in accordance with the law after giving fair opportunity to the Petitioner to submit documents in his defence.

7. Petitioner shall appear before the Recovery Officer on 14th December, 2007 at 3 p.m. in the Office of Respondent No.3, who in turn shall proceed to decide the matter on the basis of the statement filed by the Petitioner and taking into account supporting documents, if any. The Petitioner through

Counsel undertakes to remain present before the Recovery Officer and extend full cooperation to the Recovery Officer for early decision of the matter, which is rendered not later than two months from today. Petition disposed off on the above terms.

8. It is made clear that the Recovery Officer shall decide all the issues on its own merits in accordance with the law.

(A.M.KHANWILKAR,J)